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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 382.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM SAUNDERS.

APPEAL FROM THE COURT OF CLAIMS.

FILED FEBRUARY 14, 1874.

Oct. 7, 1874

SUPREME COURT OF THE UNITED STATES.

No. 382.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM SAUNDERS.

APPEAL FROM THE COURT OF CLAIMS.

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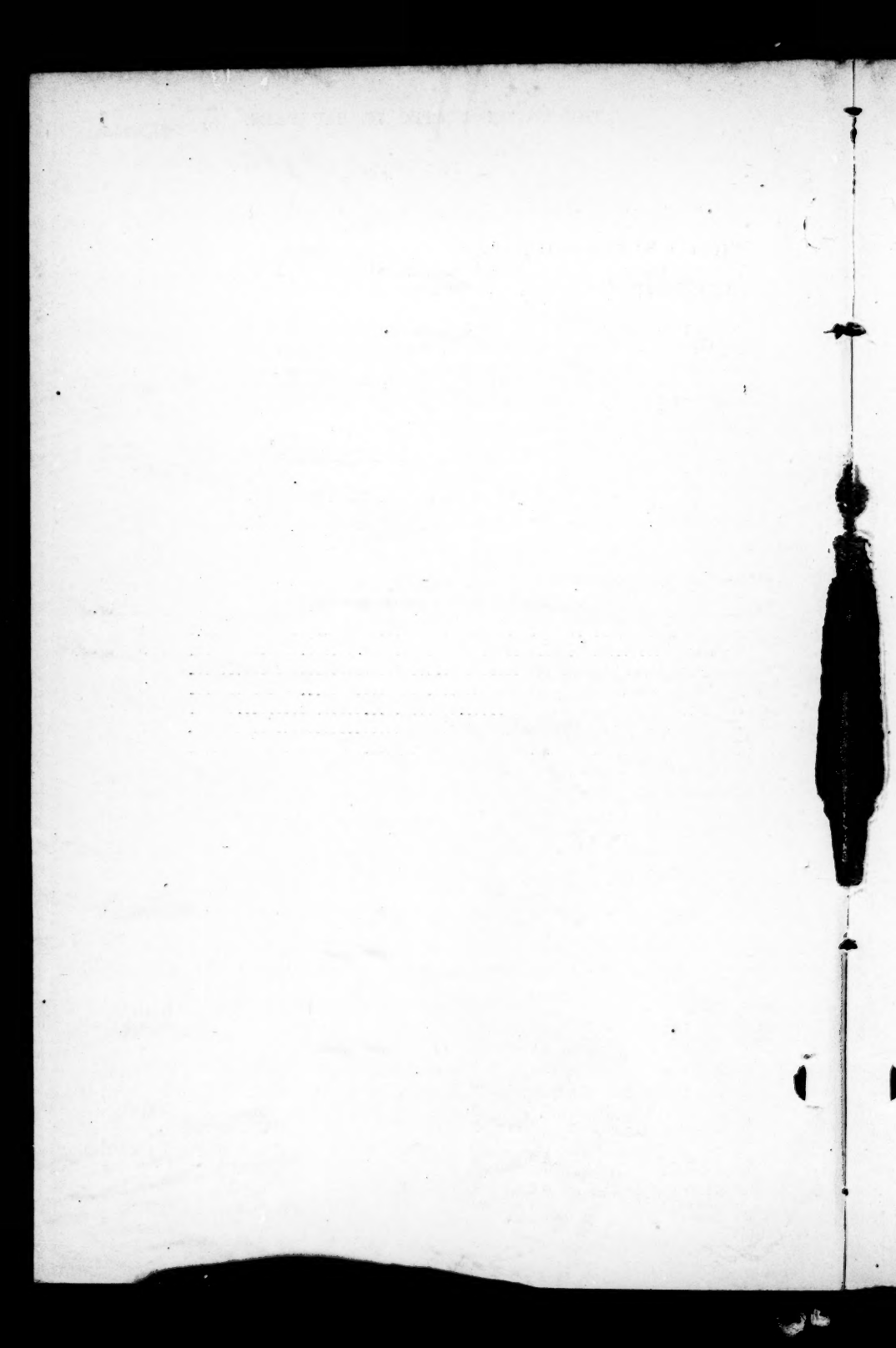

1 *Petition.*

U. S. Court of Claims, December term, 1871.

WILLIAM SAUNDERS
vs.
THE UNITED STATES. } No. 6453.—Filed July 19, 1872.—J. R.

The petition of William Saunders represents that he is a citizen of the United States and at present a resident of the District of Columbia; that in the year 1863 he was appointed Superintendent of Gardens of the Department of Agriculture, at a salary of two thousand dollars per annum, and has performed the duties of said office continuously from the date of his appointment to the present time.

Petitioner alleges that on the 28th day of July, 1866, Congress passed an act allowing to the "three superintendents of the public gardens, their clerks and assistants," "an addition of twenty per cent. on their present pay, to commence with the present Congress," and made an appropriation to pay the same. (Vol. 14, Stat. at L., chap. 296, sec. 18, p. 323.)

Petitioner further shows that he was one of the three superintendents referred to and included in said act.

Petitioner further alleges that said act remained in full force and effect until July 1, 1870, when it was repealed by the 4th section of the act of July 12, 1870. (Vol. 16, Stat. at L., p. 250.)

Petitioner avers that, by the provisions of the said act of July 28, 1866, he is justly entitled to the additional pay of twenty per cent. upon his salary of two thousand dollars, from March 4, 1865, to July 1, 1870, which, for five years three months and twenty-eight days, amounts to the sum of two thousand one hundred and thirty-one dollars and eleven cents.

Petitioner further shows that he presented his claim for the addition of twenty per cent. upon the amount of his salary to the proper department for payment, but payment was refused. A copy of the decision of the First Comptroller is hereto annexed, marked Exhibit A.

Your petitioner further shows that he has at all times borne true allegiance to the Government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and he prays the judgment of this honorable court for the said sum of two thousand one
2 hundred and thirty-one dollars and eleven cents, ($2,131.11,) and for such other and further relief as the nature of the case may show he is entitled to.

WILLIAM SAUNDERS.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

William Saunders, being duly sworn, deposeth that he is the claimant in the foregoing petition; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition is stated; that claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

WILLIAM SAUNDERS.

Sworn and subscribed to before me, a justice of the peace in and for said county and district.

Witness my hand and seal this 16th day of July, A. D. 1872.

[SEAL.] JOHN T. C. CLARK, *J. P.*

Claimant address is Washington, D. C.

Claimant's solicitor, J. W. Denver, 1115 Penn. avenue, Washington D. C.

EXHIBIT A.

TREASURY DEPARTMENT,
First Comptroller's Office, May 19, 1871.

SIR: Your communication of January 19, 1871, relative to twenty per cent. additional compensation claimed by the Superintendent of the Garden connected with the Department of Agriculture was duly received, and has been considered.

On examination, I find that there is no appropriation from which the additional compensation claimed can be paid.

I might content myself with this answer; but, lest I may be misunderstood, I state further that, in my opinion, the Superintendent of the Experimental Garden at the Agricultural Department is not embraced in the 18th sec. of the act of July 28, 1866.

A careful examination of that section will lead to the conclusion that the increase of compensation provided was intended to be limited to persons under the direct or indirect control of Congress or of some committee.

I am, very respectfully,

R. W. TAYLER, *Comptroller.*

Hon. HORACE CAPRON,
Comm'r of Agriculture.

COMPTROLLER'S OFFICE, *July* 13, 1872.

I hereby certify that the foregoing copy is correct.

WM. HEMPHILL JONES,
Acting Comptroller.

3 *General traverse.*

In the Court of Claims of the United States, December term, A. D. 1871.

WM. SAUNDERS
vs.
THE UNITED STATES. } No. 6453.—Filed Sept. 17, 1872.

And now comes the Attorney-General on behalf of the United States, and makes answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of two thousand one hundred and thirty-one dollars and eleven cents, says that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government

of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, denies the said allegation.

WM. McMICHAEL,
Assistant Attorney-General.

4 In the Court of Claims.

WILLIAM SAUNDERS
vs.
THE UNITED STATES. } 6453.

At a Court of Claims, held at the Capitol in the city of Washington, second day of February, A. D. 1874, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said William Saunders have and recover of and from the United States the sum of two thousand one hundred and thirty-one dollars eleven cents, ($2,131.11.)

A true copy of record.

5 In the Court of Claims of the United States, December term, 1873.

WILLIAM SAUNDERS
vs.
THE UNITED STATES. } No. 6453.

From the judgment rendered in the above-entitled cause, on February 2d, 1874, in favor of the claimant, the defendants, by their Attorney-General, on the 11th day of February, 1874, make application for and give notice of an appeal to the Supreme Court of the United States, the decision being one which will affect a class of cases,

JOHN GOFORTH,
Ass't Att'y-General.

A. D. R.
Filed Feb. 11, 1874.

In compliance with the fifth section of the "act to amend 'An act to establish a court for the investigation of claims against the United States,' approved February 24, 1855," it is certified that the judgment above appealed from will affect a class of cases.

C. D. DRAKE,
Chief-Justice of the Court of Claims.

6 *Finding of facts.—Filed Feb.* 2, 1874.

United States Court of Claims.

WILLIAM SAUNDERS
vs.
THE UNITED STATES. } No. 6453.

In this case the court, upon the evidence, finds the facts to be as follows:

From the 4th day of March, 1865, to the 1st day of July, 1870, the

claimant held the position and performed the duties of Superintendent of the Public Gardens of the Department of Agriculture, at a salary of two thousand dollars per annum.

For the time between July 1, 1866, and June 30, 1867, he was, under the joint resolution of February 28, 1867, (14 Stat. at L., 569,) paid, in separate monthly payments, twenty per cent. additional upon his said salary; but he has not been paid anything additional upon said salary under the 18th section of the act of July 28, 1866, (14 Stat. at L., 310, 323.)

Upon the foregoing facts the court, pro forma, for the purpose of obtaining the decision of the Supreme Court of the United States upon the questions of law involved, holds, as a conclusion of law, that the addition of twenty per cent. on the pay of the claimant, authorized by the 18th section of the said act of July 28, 1866, was not an addition merely for the period of time between the commencement of the Congress that passed said act, viz, March 4, 1865, and the date of said act, but was a continuing addition upon said pay from said March 4, 1865, to the time said section of said act was repealed, viz, July 1, 1870, and that therefore the claimant is entitled to recover from the defendants the said addition of twenty per cent. on his said salary from March 4, 1865, to July 1, 1870; which addition for said period amounts to the sum of $2,131.11, for which judgment will be entered in his favor.

7 In the Court of Claims.

WILLIAM SAUNDERS
vs.
THE UNITED STATES. } No. 6453.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney-General for the allowance of an appeal, as filed in the clerk's office February 11, 1874, and of the order of the court allowing the same; of the findings of fact, and conclusion of law thereon, on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this thirteenth day of February, A. D. 1874.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 382. The United States, appellants, vs. William Saunders. Court of Claims. Filed 14th February, 1874.

In the Supreme Court of the United States.

THE UNITED STATES, APPELLANTS.
vs.
WILLIAM SAUNDERS.
} No. 382.

APPEAL FROM THE COURT OF CLAIMS.

Brief for Appellants.

In the Supreme Court of the United States.

THE UNITED STATES, APPELLANTS,
vs.
WILLIAM SAUNDERS.
} No. 382.

APPEAL FROM THE COURT OF CLAIMS.

Brief for Appellants.

In the court below, judgment was rendered in favor of the appellee for the sum of $2,131.11, being twenty per cent. on his salary as Superintendent of Public Gardens in the Department of Agriculture, from March 4, 1865, to July 1, 1870. The court below held that the eighteenth section of the act of 28th July, 1866, was a continuing act, and that claimant was within its provisions. He had already received twenty per cent. on his salary for the fiscal year ending June 30, 1867, under the joint resolution of 28th February, 1867.

ASSIGNMENT OF ERRORS.

1. The court below erred in entering judgment in favor of claimant.

2. The court below erred in entering judgment for $2,131.11.

I.

The claimant was not within the meaning of the eighteenth section of the act of July 28, 1866.

14 St. L., p. 310, 323.

From its language it is evident that it was intended for the benefit of those only who were directly or indirectly under the control of Congress, that is, of the legislative branch of the Government:

SEC. 18. *And be it further enacted*, That there be allowed and paid to the officers, clerks, committee clerks, messengers, and all other employés of the Senate and House of Representatives, and to the Globe and official reporters of each House, and the stenographer of the House, and to the Capitol police, and the three superintendents of the public gardens, their clerks and assistants, and to the Librarian, assistant librarians, messengers, and other employés of the Congressional Library, an addition of twenty per cent. on their present pay, to commence with the present Congress; and the amount necessary to pay this allowance is hereby appropriated out of any money in the Treasury not otherwise appropriated.

It enumerates, first, all the employés of the Senate and House of Representatives, then the reporters and stenographers of each House, and between the Capitol police and the employés of the Congressional Library are placed the three superintendents of the public gardens.

This juxtaposition (almost blending) of the officers of the public gardens with the officers of the Library is worthy of consideration in the construction of this section; for the Botanic Gardens and the Library are equally under the care and supervision of the Library Committee of Congress. Of the various gardens, Agricultural, Experimental, Propagating, President's, Congressional, and Botanic, none were included in the legislative appropriations but the latter:

Botanic Garden.—For grading, draining, procuring manure, tools, fue and repairs, purchasing trees and shrubs, under the direction of the library committee of congress three thousand three hundred dollars.

For pay of Superintendent of Botanic Garden, and assistants in the Botanic Garden and green-houses, to be expended under the direction of the library committee of congress, six thousand one hundred and forty-five dollars and eighty cents.

Act 2d July 1864, 13 St. L., 349.

For the construction of a new green-house, with central dome and a wing to correspond in size with the present green-house in the Botanic Garden, to be built of iron and glass, according to a plan prepared by the Architect of the Capitol Extension and approved by the Joint Committee on the Library, thirty-five thousand dollars; the same to be expended under the direction of the Joint Committee on the Library of Congress.

Act 2d March, 1867, 14 St. L.,463.

In the appropriation act of March 2, 1867, 14 St. L., 443, under the title "Library of Congress—"

For Botanic Garden, under direction of Library Committee of Congress, $3,300. For pay of superintendent *and assistants*, and assistants in Botanic Garden and green-house, under direction of the Library Committee of Congress, $6,145.80.

—meaning the superintendent and assistant superintendents, and assistants (clerks or laborers) under them. And then follows this provision:

For twenty per centum additional on the pay of the above, $1,229.16.

The absence of this provision, after the appropriations for the other public gardens, proves that the Congress which passed the 18th section of act 28th July, 1866, understood that the Botanic was the only garden included within its terms.

No act of Congress ever created or recognized the office of Superintendent of Public Gardens in any but the Botanic Garden. Whatever may have been Mr. Saunders' duties, yet he was not known in the eye of the law on the 28th June, 1866, as a superintendent of public garden. The same Congress afterwards, by joint resolution approved 28th February, 1867, (14 St. L., 569) made an almost identical provision for the officers, employés, &c., of the Executive Departments, the two together including all the officers and employés of the Government within the city of Washington. Being *in pari materia*, they are to be construed as one act. The *resolution* allows twenty per centum additional allow-

ance on the salaries inter alia of civil officers, clerks, employés, &c., of the Department of Agriculture and Commissioner of Public Buildings, thus providing for the public gardens not within the provisions of the 18th section of the act of 28th July, 1866. The Botanic Garden does not come within the *resolution*, and the appellee claims that among the many thousands benefited by the act and resolution, he and his comrades in the garden of the Department of Agriculture, for no special reason, were selected to be the recipients of a double portion. Claimant has received twenty per centum under the joint resolution, placing himself, therefore, in the Executive Departments. Having made his election, he is estopped from changing his base of operations, and claiming as an employé in the legislative department.

II.

The twenty per centum should be computed only on salary due on the 28th July, 1866, or at the most, at the end of the fiscal year.

The title to the act 28th July, 1866, p. 810, is—

An act making appropriations for sundry civil expenses of the Government *for the year ending June thirtieth, eighteen hundred and sixty-seven*, and for other purposes.

Sec. 17 provides, p. 323:

That the compensation of each Senator, &c., *shall be, &c.*

Sec. 18 provides:

That there *be allowed and paid* to officers, &c., an addition of 20 per cent. on their present pay, to commence with the present Congress; and the amount necessary to pay this allowance is hereby appropriated out of any money in the Treasury not otherwise appropriated.

In Edrich's case (Coke's Reports, 118a, p. 240,) it was held that "the several inditing and penning of the

former part, and of this branch, doth argue that the makers did intend a difference of the purviews and remedies, or otherwise they would have followed the same words."

The present tense of the enacting clause of the 18th section indicates that it was intended for a grant or gratuity ending with the fiscal year, and not for a continuing law. "That there *be allowed* and paid" is very different from "the compensation shall be" of the 17th section, and is not the language which would be used in enacting a permanent rule for the conduct of disbursing officers of the Government. The further language of the section shows that its authors thought its whole purpose would be accomplished, and its vitality gone, when twenty per cent. on salaries from the beginning of the XXXIX Congress to the date of its passage, or to the end of the fiscal year, had been allowed and paid, for "*the amount necessary to pay this allowance*" is thereupon appropriated.

No argument to the contrary can be drawn from the repeal of the act mentioned in claimant's petition, (§ 4, act 12 July, 1870; St. L., 16, p. 250,) for this section is repealed only by implication, not expressly.

GEO. H. WILLIAMS,
Attorney-General.

JOHN GOFORTH,
Assistant Attorney-General.

Supreme Court of the United States.

OCTOBER TERM, 1874.

No. 382.

THE UNITED STATES

vs.

WILLIAM SAUNDERS.

Brief for appellee.

This is an appeal from a judgment of the Court of Claims in favor of the appellee for twenty per cent. additional on his compensation as one of the three "superintendents of public gardens" referred to in the 18th section of the act of Congress, approved July 28th, 1866, which section is as follows:

SEC. 18. *And be it further enacted*, That there be allowed and paid to the officers, clerks, * * * * and the three superintendents of the public gardens, their clerks and assistants, * * * * an addition of twenty per cent. on their present pay, to commence with the present Congress; and the amount necessary to pay this allowance is hereby appropriated out of any money in the Treasury not otherwise appropriated.

U. S. Statutes at Large, Vol. 14, p. 323.

The Court of Claims finds that Saunders was one of the "three superintendents of public gardens" mentioned in this act, and that he was never paid anything under it.

The question submitted to this Court for decision is, whether this act, which was made to take effect March 4th, 1865, extended beyond the date of its approval, July 28, 1866? Of this there would seem to be scarcely a reasonable doubt. It is a

general act, and the only period of time referred is that when it should take effect. The payment of the twenty per cent. additional to their present pay was "to commence with the present Congress," and that Congress commenced on the 4th of March, 1865. There was no limitation as to the duration of the act, and it is a well known fact that other officers and employees embraced under its provisions continued to be paid the twenty per cent. additional until it was finally repealed by the 4th section of the act, approved July 12th, 1870, (U. S. Statutes at Large, Vol. 16, p. 250.)

The joint resolution approved February 28, 1867, (14 Stat. at Large, p. 569,) gave an additional twenty per cent. to certain officers and employees therein mentioned, but that was limited to *one year*. The act of March 3d, 1865, (Sec. 2, Vol. 13, U. S. Stat. at Large, p. 497,) increased the commutation price of the officer's ration, but limited it to "during the continuance of the present rebellion." Without this limitation would any one doubt that the increase in this case would not have been permanent and continuous in its operation? And so with all statutes, when not limited as to their duration. So with the 18th section of the act of July, 28th, 1866. It continued in full force and effect until repealed by the act of July 12th, 1870; and there is no conflict between the act and joint resolution. If Congress chose to make a permanent increase of compensation to Government officers and employees, and then to make an additional temporary increase for them, who will deny their right to do so?

J. W. DENVER,
Attorney for Appellee.